

The Senate Committee on Insurance and Labor offered the following substitute to SB 156:

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to  
2 provide for the division of a domestic insurer into two or more resulting domestic insurers;  
3 to provide for definitions; to provide for a plan of division subject to approval by the  
4 Insurance Commissioner; to provide for a certificate of division; to provide for the effect of  
5 a division; to provide for the responsibilities of a resulting insurer; to provide for shareholder  
6 appraisal rights; to provide for rules and regulations; to revise rules and regulations to  
7 remove the Attorney General's approval requirements; to revise the authorization and  
8 procedure for merger or consolidation; to amend Part 1 of Article 13 of Chapter 2 of Title 14  
9 of the Official Code of Georgia Annotated, relating to the right to dissent and obtain payment  
10 for shares, so as to add the right to dissent and obtain payment for shares for a division of a  
11 domestic insurer; to provide for related matters; to repeal conflicting laws; and for other  
12 purposes.

13           **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

14           **SECTION 1.**

15 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended in  
16 Chapter 14, relating to domestic stock and mutual insurers, by adding a new article to read  
17 as follows:

18           "ARTICLE 6

19       33-14-120.

20       As used in this article, the term:

21       (1) 'Capital' means the capital stock component of statutory surplus, as defined in the  
22       National Association of Insurance Commissioners Accounting Practices and Procedures  
23       Manual, version effective January 1, 2001, and subsequent revisions.

24       (2) 'Director' means a person:

25       (A) By or under whose authority the powers of a corporation are exercised; and  
26       (B) Under whose direction the business and affairs of the corporation are managed  
27       pursuant to the articles of incorporation or bylaws of the corporation.

28       (3) 'Divide' or 'division' means a transaction in which a domestic insurer divides into two  
29       or more resulting domestic insurers.

30       (4) 'Dividing insurer' means a domestic insurer that approves a plan of division pursuant  
31       to Code Section 33-14-122.

32       (5) 'Liability' means a debt, obligation, or any other liability arising in any manner,  
33       regardless of whether it is secured or contingent.

34       (6) 'New insurer' means a domestic insurer that is created by a division occurring on or  
35       after the effective date of this article.

36       (7) 'Property' means all property, whether real, personal, or mixed, tangible or intangible,  
37       or any right or interest therein, including rights under contracts and other binding  
38       agreements.

39       (8) 'Resulting insurer' means a new insurer or a dividing insurer that survives a division.

40       (9) 'Share' means a share of membership in a corporation.

41       (10) 'Shareholder' means the person in whose name shares are registered in the records  
42       of a corporation or the beneficial owner of shares to the extent of the rights granted by  
43       a nominee certificate on file with a corporation.

44       (11) 'Sign' or 'signature' means any manual, facsimile, conformed, or electronic  
45       signature.

46       (12) 'Surplus' means total statutory surplus less capital stock, adjusted for the par value  
47       of any treasury stock, calculated in accordance with the National Association of  
48       Insurance Commissioners Accounting Practices and Procedures Manual, version effective  
49       January 1, 2001, and subsequent revisions.

50       (13) 'Transfer' means an assignment, conveyance, sale, lease, or encumbrance, including  
51       a mortgage or security interest, gift, or transfer by operation of law.

52       33-14-121.

53       (a) Any domestic insurer may, in accordance with the requirements of this article, divide  
54       into two or more resulting insurers pursuant to a plan of division.

55       (b)(1) A plan of division shall include:

56       (A) The name of the dividing insurer seeking to divide;

57       (B) The name of each resulting insurer or insurers that will be created by the proposed  
58       division, including its proposed articles of incorporation and proposed bylaws;

59       (C) The manner of allocating between or among the resulting insurers:

60       (i) The property of the dividing insurer that will not be owned by all of the resulting  
61       insurers as tenants in common pursuant to Code Section 33-14-125; and

62       (ii) Those policies and other liabilities of the dividing insurer to which not all of the  
63       resulting insurers will be jointly and severally liable pursuant to paragraph (3) of  
64       subsection (a) of Code Section 33-14-126;

65       (D) The manner of distributing shares in a new insurer to the dividing insurer or its  
66       shareholders;

67       (E) A reasonable description of liabilities, capital, surplus, or other property the  
68       dividing insurer proposes to allocate to a new insurer, including the manner by which  
69       each reinsurance contract is to be allocated;

70       (F) All terms and conditions required by the laws of this state or the articles of  
71       incorporation or bylaws of the dividing insurer; and

72       (G) All other terms and conditions of the division.

73       (2) If the dividing insurer will survive the division, the plan of division shall include, in  
74       addition to the information required by paragraph (1) of this subsection:

75       (A) All proposed amendments to the dividing insurer's articles of incorporation and  
76       bylaws, if any;

77       (B) If the dividing insurer desires to cancel some but not all shares in the dividing  
78       insurer, the manner in which it will cancel such shares; and

79       (C) If the dividing insurer desires to convert some but not all shares in the dividing  
80       insurer into interests, securities, shares, obligations, money, other property, or rights to  
81       acquire interests, securities, or shares, or any combination thereof, a statement  
82       disclosing the manner in which it will convert such shares.

83       (3) If the dividing insurer will not survive the proposed division, the plan of division  
84       shall contain, in addition to the information required by paragraph (1) of this subsection,  
85       the manner in which the dividing insurer will cancel or convert shares in the dividing  
86       insurer into interests, securities, shares, obligations, money, other property, or rights to  
87       acquire interests, securities, or shares, or any combination thereof.

88       (c) A dividing insurer may amend a plan of division in accordance with any procedures  
89       set forth in the plan or, if no such procedures are set forth in the plan, in any manner  
90       determined by the board of directors of the dividing insurer, except that a shareholder that  
91       was entitled to vote on or consent to approval of the plan of division is entitled to vote on  
92       or consent to any amendment of the plan that will change:

93       (1) The amount or kind of interests, securities, shares, obligations, money, other  
94       property, or rights to acquire interests, securities, or shares, or any combination thereof,  
95       to be received by any of the shareholders of the dividing insurer under the plan;

96       (2) The articles of incorporation of any resulting insurer that will be in effect when the  
97       division becomes effective, except for changes that do not require approval of the  
98       shareholders of the resulting insurer under its articles of incorporation; or  
99       (3) Any other terms or conditions of the plan, if the change would adversely affect the  
100       shareholders in any material respect.

101      (d)(1) A dividing insurer may abandon a plan of division after it has approved the plan  
102       without any action by the shareholders and in accordance with any procedures set forth  
103       in the plan or, if no such procedures are set forth in the plan, in a manner determined by  
104       the board of directors of the dividing insurer.

105      (2) A dividing insurer may abandon a plan of division after it has delivered a certificate  
106       of division to the Secretary of State by delivering to the Secretary of State a certificate  
107       of abandonment signed by the dividing insurer. The certificate of abandonment shall be  
108       effective on the date it is filed with the Secretary of State, and the dividing insurer shall  
109       be deemed to have abandoned its plan of division on such date.

110      (3) A dividing insurer may not abandon its plan of division once the division becomes  
111       effective.

112      33-14-122.

113      (a) Except as provided in subsections (b) and (c) of this Code section, a dividing insurer  
114       shall not file a plan of division with the Commissioner unless such plan has been approved  
115       in accordance with:

116       (1) All provisions of its articles of incorporation and bylaws; or  
117       (2) If its articles of incorporation and bylaws do not provide for approval of a division,  
118       all provisions of its articles of incorporation and bylaws that provide for approval of a  
119       merger.

120      (b) Shareholder approval of a plan of division shall not be required unless:

121       (1) The articles of incorporation and bylaws of the dividing insurer require such  
122       approval;

123       (2) The plan makes an amendment to the articles of incorporation and bylaws requiring  
124       such approval; or

125       (3) The dividing insurer will not survive the proposed division and has only one class of  
126       shares outstanding and the shares of each new insurer will not be distributed pro rata to  
127       the shareholders.

128      (c)(1) If any provision of the articles of incorporation and bylaws of a dividing insurer  
129       adopted before the effective date of this article requires that a specific number or  
130       percentage of directors or shareholders approve the proposal or adoption of a plan of  
131       merger, or imposes other special procedures for the proposal or adoption of a plan of

merger, such dividing insurer shall adhere to such provision in proposing or adopting a plan of division.

(2) If a provision of any debt security, note, or similar evidence of indebtedness for money borrowed, whether secured or unsecured, indenture or other contract relating to indebtedness, or a provision of any other type of contract other than an insurance policy, annuity, or reinsurance agreement, that was issued, incurred, or executed by the domestic insurer before the effective date of this article requires the consent of the obligee to a merger of the insurer or treats such a merger as a default and does not provide that a division of the insurer does not require the consent of the obligee or treat a division as a default, as applicable, then such provision applies to a division of the insurer as if such division were a merger.

(3) If any provision described in paragraph (1) or (2) of this subsection is amended on or after the effective date of this article, such provision shall thereafter apply to a division only in accordance with its express terms.

33-14-123.

(a) A division does not become effective until it is approved by the Commissioner after reasonable notice and a public hearing. A hearing conducted under this Code section must be conducted pursuant to Chapter 2 of this title.

(b) Subject to subsection (1) of this Code section, the Commissioner shall approve a plan of division unless the Commissioner finds any of the following:

(1) The interest of the policyholders of the dividing insurer that may become policyholders of a resulting insurer will not be adequately protected by the resulting insurer or acquiring party of a resulting insurer, if any;

(2) After the division, any resulting insurer would not be able to satisfy the requirements for the issuance of a certificate of authority;

(3) The division would substantially lessen competition in insurance in this state or tend to create a monopoly in this state;

(4) The financial condition of an acquiring party of a resulting insurer, if any, is such that it might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of a remaining shareholder that is unaffiliated with the acquiring party;

(5) The terms of the plan of division are unfair and unreasonable to the dividing insurer's policyholders or shareholders;

(6) An acquiring party of a resulting insurer, if any, has plans or proposals to liquidate the resulting insurer, sell its assets, or consolidate or merge the resulting insurer with a person, or to make any other material change in its business or corporate structure or

168     management, that are unfair and unreasonable to the resulting insurer's policyholders, and  
169     not in the public interest;

170     (7) The competence, experience, and integrity of the persons who would control the  
171     operation of a resulting insurer are such that it would not be in the interest of the resulting  
172     insurer's policyholders or the general public to permit the division;

173     (8) The division is likely to be hazardous or prejudicial to the insurance-buying public;

174     (9) The proposed division violates Article 4 of Chapter 2 of Title 18, the 'Uniform  
175     Voidable Transactions Act';

176     (10) The division is being made for purposes of hindering, delaying, or defrauding any  
177     policyholders or other creditors of the dividing insurer;

178     (11) One or more resulting insurers will not be solvent on the consummation of the  
179     division; or

180     (12) The assets allocated to one or more resulting insurers will be, on consummation of  
181     a division, unreasonably small in relation to the business and transactions in which the  
182     resulting insurer was engaged or is about to engage.

183     (c) If a division is undertaken in conjunction with the divestiture of one of the resulting  
184     insurers, the Commissioner shall not approve the division until the potential acquiring party  
185     has received the necessary approval under Code Section 33-13-3.

186     (d) In determining whether the standard set forth in paragraph (9) of subsection (b) of this  
187     Code section has been satisfied, the Commissioner shall only apply the 'Uniform Voidable  
188     Transactions Act' to a dividing insurer in its capacity as a resulting insurer and shall not  
189     apply the 'Uniform Voidable Transactions Act' to any dividing insurer that is not proposed  
190     to survive the division.

191     (e) In determining whether the standards set forth in paragraphs (9), (10), (11), and (12)  
192     of subsection (b) this Code section have been satisfied, the Commissioner may consider,  
193     among other things, all assets, liabilities, and cash flows.

194     (f) In determining whether the standard set forth in paragraph (9) of subsection (b) of this  
195     Code section has been satisfied, with respect to each resulting insurer, the Commissioner  
196     shall, in applying the 'Uniform Voidable Transactions Act,' do all of the following:

197         (1) Treat the resulting insurer as a debtor;

198         (2) Treat liabilities allocated to the resulting insurer as obligations incurred by a debtor;

199         (3) Treat the resulting insurer as not having received reasonably equivalent value in  
200         exchange for incurring the obligations; and

201         (4) Treat assets allocated to the resulting insurer as remaining property.

202     (g) All information, documents, materials, and copies of documents and materials  
203     submitted to, obtained by, or disclosed to the Commissioner in connection with a plan of  
204     division or in contemplation of a plan of division, including any information, documents,

205 materials, or copies provided by or on behalf of a domestic stock insurer in advance of its  
206 adoption or submission of a plan of division, are confidential and are subject to the same  
207 protection and treatment in accordance with Code Section 33-2-14 as information and  
208 documents disclosed to or obtained by the Commissioner in the course of an examination  
209 or investigation made under Code Section 33-2-11 until the time, if any, that a notice of the  
210 hearing contemplated by subsection (a) of this Code section is issued.

211 (h) From and after the issuance of a notice of the hearing contemplated by subsection (a)  
212 of this Code section, all business, financial, and actuarial information for which the  
213 domestic stock insurer requests confidential treatment, other than the plan of division and  
214 any materials incorporated by reference into or otherwise made a part of the plan of  
215 division that must not be eligible for confidential treatment after the issuance of a notice  
216 of the hearing, continues to be confidential and is not available for public inspection and  
217 must be subject to the same protection and treatment in accordance with Code Section  
218 33-2-14 as information and documents disclosed to or obtained by the Commissioner in the  
219 course of an examination or investigation made under Code Section 33-2-11. However,  
220 if the Commissioner determines that the interest of the public in making the information  
221 available for public inspection outweighs the interest of the dividing insurer in keeping the  
222 information confidential, the Commissioner may, after notice and an opportunity to be  
223 heard, make the information available to public inspection.

224 (i) All expenses incurred by the Commissioner in connection with proceedings under this  
225 section, including expenses for the services of any attorneys, actuaries, accountants, and  
226 other experts not otherwise a part of the department staff as may be reasonably necessary  
227 to assist the Commissioner in reviewing the proposed division, must be paid by the  
228 dividing insurer filing the plan of division. A dividing insurer may allocate expenses  
229 described in this subsection in a plan of division in the same manner as any other liability.

230 (j) If the Commissioner approves a plan of division, the Commissioner shall issue an order  
231 approving the plan of division that must be accompanied by findings of fact and  
232 conclusions of law.

233 (k) The conditions in this Code section for freeing one or more of the resulting insurers  
234 from the liabilities of the dividing insurer and for allocating some or all of the liabilities of  
235 the dividing insurer are conclusively satisfied if the plan of division has been approved by  
236 the Commissioner in a final order, after all relevant appeals relating to the final order have  
237 been exhausted.

238 (l) The Commissioner may establish any additional procedures necessary or appropriate  
239 in connection with his or her review of a plan of division.

240 33-14-124.

241 (a) After a plan of division has been adopted and approved under Code Sections 33-14-122  
242 and 33-14-123, an officer or duly authorized representative of the dividing insurer shall  
243 sign a certificate of division.

244 (b) The certificate of division shall set forth:

245 (1) The name of the dividing insurer;

246 (2) A statement disclosing whether the dividing insurer will survive the division;

247 (3) The name of each resulting insurer;

248 (4) The date on which the division is to be effective, which shall not be more than 90  
249 days after the dividing insurer has filed the certificate of division with the Secretary of  
250 State;

251 (5) A statement that the division was approved by the dividing insurer in accordance  
252 with Code Section 33-14-122;

253 (6) A statement that the division was approved by the Commissioner in accordance with  
254 Code Section 33-14-123;

255 (7) A statement that the dividing insurer provided, not later than ten business days after  
256 the dividing insurer filed the plan of division with the Commissioner, reasonable notice  
257 to each insurer or reinsurer that is party to a reinsurance contract allocated in the plan of  
258 division;

259 (8) If the dividing insurer will survive the division, any amendment to its articles of  
260 incorporation approved as part of the plan of division;

261 (9) For each new insurer created by the division, its articles of incorporation, which need  
262 not state the name or address of an incorporator of a corporation; and

263 (10) A reasonable description of the capital, surplus, other property, and policies and  
264 other liabilities of the dividing insurer that are to be allocated to each resulting insurer.

265 (c) The articles of incorporation, if any, of each new insurer must satisfy the requirements  
266 of the laws of this state, but such articles need not be signed or include any provision that  
267 need not be included in a restatement of such articles.

268 (d) A certificate of division shall be effective when filed with the Secretary of State or on  
269 such other date specified in the plan of division, whichever is later; provided, however, that  
270 a certificate of division shall become effective not more than 90 days after it is filed with  
271 the Secretary of State. A division shall be effective when the relevant certificate of  
272 division becomes effective.

273 33-14-125.

274 (a) When a division becomes effective pursuant to subsection (d) of Code  
275 Section 33-14-124:

276       (1) If the dividing insurer has survived the division:

277           (A) It continues to exist;

278           (B) Its articles of incorporation, if any, shall be amended as provided in the plan of  
279           division; and

280           (C) Its bylaws, if any, shall be amended as provided in the plan of division;

281       (2) If the dividing insurer has not survived the division, its separate existence ceases to  
282           exist;

283       (3) Each new insurer:

284           (A) Comes into existence;

285           (B) Shall hold any capital, surplus, and other property allocated to it as a successor to  
286           the dividing insurer, and not by transfer, whether directly or indirectly; and

287           (C) Its articles of incorporation and bylaws shall be effective;

288       (4) Capital, surplus, and other property of the dividing insurer:

289           (A) That is allocated by the plan of division either:

290              (i) Vests in the new insurers as provided in the plan of division; or

291              (ii) Remains vested in the dividing insurer;

292           (B) That is not allocated by the plan of division:

293              (i) Remains vested in the dividing insurer, if the dividing insurer survives the  
294              division; or

295              (ii) Is allocated to and vests equally in the resulting insurers as tenants in common,  
296              if the dividing insurer does not survive the division; or

297           (C) Vests as provided in this subsection without transfer, reversion, or impairment;

298       (5) A resulting insurer to which a cause of action is allocated as provided in  
299           paragraph (4) of this subsection may be substituted or added in any pending action or

300           proceeding to which the dividing insurer is a party when the division becomes effective;

301       (6) The policies and other liabilities of the dividing insurer are allocated among the  
302           resulting insurers as provided in Code Section 33-14-126 and the resulting insurers to  
303           which policies or other liabilities are allocated are liable for those policies and other  
304           liabilities as successors to the dividing insurer, and not by transfer, whether directly or  
305           indirectly;

306       (7) Any division that becomes effective pursuant to subsection (d) of Code  
307           Section 33-14-124 shall not be deemed to constitute an assignment of any insurance  
308           policy, annuity, reinsurance agreement, or any other type of contract under the laws of  
309           this state; and

310       (8) The shares in the dividing insurer that are to be converted or canceled in the division  
311           are converted or canceled, and the shareholders of those shares are entitled only to the

rights provided to them under the plan of division and any appraisal rights they may have pursuant to Code Section 33-14-127.

(b) Except as provided in the articles of incorporation or bylaws of the dividing insurer, the division shall not give rise to any rights that a director, shareholder, or third party would have upon a dissolution, liquidation, or winding up of the dividing insurer.

(c) The allocation to a new insurer of capital, surplus, or other property that is collateral covered by an effective financing statement shall not be effective until a new financing statement naming the new insurer as a debtor is effective under Articles 1 through 9 of Title 11.

(d) Unless otherwise provided in the plan of division, the interests in and any shares of each new insurer shall be distributed to:

(1) The dividing insurer, if it survives the division; or

(2) The shareholders of the shares of the dividing insurer that do not assert appraisal rights, pro rata, if the dividing insurer does not survive the division.

33-14-126.

(a) Except as provided in this Code section, when a division becomes effective, a resulting insurer shall be responsible:

(1) Individually for the policies and other liabilities the resulting insurer issues, undertakes, or incurs in its own name after the division;

(2) Individually for the policies and other liabilities of the dividing insurer that are allocated to or remain the liability of the resulting insurer to the extent specified in the plan of division; and

(3) Jointly and severally with the other resulting insurers for the policies and other liabilities of the dividing insurer that are not allocated by the plan of division.

(b) If a division breaches an obligation of the dividing insurer, all of the resulting insurers shall be liable, jointly and severally, for the breach, but the validity and effectiveness of the division shall not be affected by the breach.

(c) A direct or indirect allocation of capital, surplus, property, or policies or other liabilities in a division shall not be considered a distribution for purposes of the articles of incorporation or bylaws of the dividing insurer or any of the resulting insurers.

(d) Liens, security interests, and other charges on the capital, surplus, or other property of the dividing insurer shall not be impaired by the division, notwithstanding any otherwise enforceable allocation of policies or other liabilities of the dividing insurer.

(e) If the dividing insurer is bound by a security agreement governed by Article 9 of Title 11, or Article 9 of the Uniform Commercial Code as enacted in any other jurisdiction,

347 and the security agreement provides that the security interest attaches to after-acquired  
348 collateral, each resulting insurer shall be bound by the security agreement.

349 (f) Except as provided in the plan of division and specifically approved by the  
350 Commissioner, an allocation of a policy or other liability shall not affect the rights under  
351 any other law of a policyholder or creditor owed payment on the policy, or payment of any  
352 other type of liability or performance of the obligation that creates the liability, except that  
353 those rights shall be available only against a resulting insurer responsible for the policy,  
354 liability, or obligation under this Code section.

355 33-14-127.

356 A shareholder of a dividing insurer shall be entitled to appraisal rights and to obtain  
357 payment of the fair value of that shareholder's shares pursuant to Code Section 14-2-1302.

358 33-14-128.

359 The Commissioner may, in accordance with the procedures set forth in Code  
360 Section 33-2-9, promulgate rules and regulations necessary to implement and enforce the  
361 provisions of this article. If the Commissioner should find that extraordinary circumstances  
362 exist and that it would be in the best interests of the citizens of this state, the Commissioner  
363 may suspend temporarily the applicability of any rule or regulation promulgated pursuant  
364 to this article."

## 365 SECTION 2.

366 Said title is further amended in Code Section 33-2-9, relating to rules and regulations, by  
367 revising subsection (b) as follows:

368 "(b) Before any rule or regulation shall become effective or before any amendment or  
369 repeal of any rule shall become effective, the proposed rule or regulation or amendment or  
370 repeal shall be approved as to legality by the Attorney General and shall have been on file  
371 as a public record in the office of the Commissioner for at least ten days."

## 372 SECTION 3.

373 Said title is further amended in Code Section 33-14-43, relating to merger or consolidation,  
374 by adding a new subsection to read as follows:

375 "(c) The Commissioner may permit the formation of a domestic insurance company that  
376 is established for the sole purpose of merging or consolidating with an existing domestic  
377 insurer simultaneously with a division authorized by Article 6 of this chapter. Upon  
378 request of the dividing insurer, as defined in Code Section 33-14-120, the Commissioner  
379 may waive the requirements of subsection (a) of this Code section, Code Section 33-3-15,

380 and Chapter 13 of this title. Each insurer formed under this subsection shall be deemed to  
381 exist before a merger and division under this Code section becomes effective, but solely  
382 for the purpose of being a party to such merger and division. The Commissioner shall not  
383 require that such insurer be licensed to transact insurance business in this state before such  
384 merger and division. All insurance policies, annuities, or reinsurance agreements allocated  
385 to such insurer shall become the obligation of the insurer that survives the merger  
386 simultaneously with the effectiveness of the merger and division. The plan of merger shall  
387 be deemed to have been approved by such insurer if the dividing insurer approved such  
388 plan. The certificate of merger shall state that it was approved by the insurer formed under  
389 this subsection."

390 **SECTION 4.**

391 Part 1 of Article 13 of Chapter 2 of Title 14 of the Official Code of Georgia Annotated,  
392 relating to the right to dissent and obtain payment for shares, is amended in Code  
393 Section 14-2-1302, relating to right to dissent, by adding a new paragraph to subsection (a)  
394 to read as follows:

395 "(6) Consummation of a division, as defined in Code Section 33-14-120, to which the  
396 corporation is a party, provided any such appraisal is subject to the limitations of Code  
397 Section 33-14-127."

398 **SECTION 5.**

399 All laws and parts of laws in conflict with this Act are repealed.